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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/410,538 10/01/99 GIAMPAVOLO P 4348-2

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EXAMINER

SANDY, R

ART UNIT

PAPER NUMBER

3626

DATE MAILED:

12/13/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/410,538

Applicant(s)
Giampavolo et al.

Examiner
Robert J. Sandy

Group Art Unit
3626



☒ Responsive to communication(s) filed on Oct 1, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-4 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-4 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 3

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 20, 38, 40, 42, 44, 45, 46, 48, 49, and 50. Correction is required.

Specification

2. The attempt to incorporate subject matter into this application by reference to an application entitled "Strap Retainer for Child Seatbelts", recited on page 7, lines 3-7, is improper because the recitation does not inform the public or the Examiner a clarification to the incorporation-by-reference document (i.e., U.S. Patent application Serial Number, Attorney Docket Number, etc.). Applicant is reminded that any recitation clarifying an incorporation-by-reference that is relied upon in the disclosure must include either an Attorney Docket Number, and its file date (at least during examination), a U.S. Patent application Serial Number and its file date, or U.S. Patent Number and its file date and current status (i.e., abandoned, etc.).

3. The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification is objected to under 35 U.S.C. § 112, first paragraph, as failing to teach how to make and/or use the invention, i.e., failing to provide an enabling disclosure. The specification fails to provide an enabling disclosure of the claimed subject matter pertaining to "a latch assembly including a first latch element releasably engaging said second end [of the first strap portion]" (claim 1, lines 4-5). The specification fails to provide support for one of ordinary skill in the art to ascertain how the second end of the strap portion is able to be *releasably engaging said second end* of the first strap portion.

Claim Objections

4. Claim 1 is objected to because of the following informalities: In claim 1, line 18, the phrase "engages fourth detent means" should read as -engages said fourth detent means--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, as follows:

Within the body of claim 1, the word "means", as recited in each of the phrases "first detent means" (line 8), "second detent means" (bridging lines 8 and 9), "third detent means" (line 14) and "fourth detent means" (line 15), are preceded by the word "detent" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

In claim 1, line 9 (and bridging lines 20 and 21), there is no antecedent basis for "said first retainer strap".

In claim 1, line 11, the phrase "said being" is vague and appears to be incomplete, thus rendering the claim(s) indefinite.

In claim 1, line 15 (and bridging lines 23 and 24), there is no antecedent basis for "said second retainer strap".

In claim 1, line 17, the phrase "said being" is vague and appears to be incomplete, thus rendering the claim(s) indefinite.

In claim 1, line 22, recitation of "a second retainer strap assembly" appears to be a double inclusion of the same subject matter in line 13 of the same claim, therefore, rendering the claim indefinite since it is not certain whether both recitations are one of the same component of the claimed device, or two strap assemblies of the claimed device. For the purposes of this

examination the examiner considers the duplicate recitation of "a second retainer strap assembly" to be drawn to one second retainer strap assembly.

7. Claim 1 is rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth in the objection to the specification in section 3 above pertaining to specification failing to provide support for one of ordinary skill in the art to ascertain how the second end of the strap portion is able to be *releasably engaging said second end* of the first strap portion.

Double Patenting

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claim 1, as best understood, is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of copending U.S. Patent application No. 09/410,539 to the same inventive entity of Paul F. Giampavolo and John S. Pontaoe, in view of Wood (U.S. Patent No. 5,263,726). Application No. 09/410,539 claims a first strap retainer assembly (i.e., "a strap retainer" 10) including: a first post element (i.e., "a post element" 12) with first detent means (i.e., "a detent channel" 23 and "a first detent element" 34) and a first strap element (i.e., "a strap element" 52) with second detent means (i.e., "a detent prong" 64), and Application No. 09/410,539 further claims "whereby when said detent prong is inserted respectively into said detent channel, said first detent element detent engages said second detent element".

However, Application No. 09/410,539 does not explicitly claim:

1) wherein "said [first retainer strap assembly] being in a closed position when said first detent means engages said second detent means"; and

2) a combination of "A child seatbelt assembly including: a first strap portion with a first end and a second end; a second strap portion with a third end and a fourth end; a latch assembly including a first latch element [releasably] engaging said second end and a second latch element engaging said third end; a second retainer strap assembly including a second post element with third detent means and a second strap element with fourth detent means, said second retainer strap [assembly] being in an open position when said third detent means is free of engagement with said fourth detent means, and said [second retainer strap assembly] being in a closed position when said third detent means engages said fourth detent means; said first retainer strap assembly being affixed to said first end in both said open position and said closed position of said first retainer strap [assembly]; [said] second retainer strap assembly being affixed to said fourth end in both said open position and said closed position of said second retainer strap [assembly]. (The preceding subject matter within parenthesis was cited from claim language of the co-pending application No. 09/410,539.)

Concerning the Application No. 09/410,539 not explicitly claiming the subject matter pertaining to "said [first retainer strap assembly] being in a closed position when said first detent means engages said second detent means", it would have been obvious to one of ordinary skill in the art at the time the invention was made to have understood the functional claimed limitation of "whereby when said detent prong is inserted respectively into said detent channel, said first detent element detent engages said second detent element" in claim 1, lines 11-13 of application No. 09/410,539 to have been an alternative phraseology of "*said [first retainer strap assembly] being in a closed position when said first detent means engages said second detent means*" as a functional equivalent since one of routine skill in the art would have recognized that both functional recitation are functional equivalent of each other, where the recitation of "*whereby when said detent prong is inserted respectively into said detent channel, said first detent element detent engages said second detent element*" is a functional equivalent describing the retainer strap assembly going to a closed position (i.e., when the first detent element engage the second detent element) from an open position of the retainer strap assembly (i.e., open position state prior to the insertion of the detent prong into the detent channel).

Concerning the Application No. 09/410,539 not explicitly claiming the combination of "A child seatbelt assembly" as mentioned above, Wood ('726) discloses a child seatbelt assembly in Figs. 1-2, comprising a first strap portion (i.e., portion having elements 32, 20 and 26 in Fig. 2) with a first end (i.e., end 26) and a second end (i.e., end having portion 32); a second strap portion (i.e., portion having elements 28 and 30 in Fig. 2) with a third end (i.e., end having portion 30) and a fourth end (i.e., end 28); a latch assembly (i.e., portion 30, 32) including a first latch element (32) engaging the second end and a second latch element (30) engaging the third end; Wood ('726) further shows the respective ends 26 and 28. of the strap portions having rings. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed the strap retainer claimed in Application No. 09/410,539 on the child seatbelt assembly, as taught by Wood ('726), having the first strap portion, second strap portion, and latch assembly by replacing each of Wood's rings and affixing a strap retainer [of Application No. 09/410,539] to each of the first end and fourth end of the respective first and second strap portions in both the open position and the closed position of the respective first and second strap assembly, in order to provide an attachment device for securely attaching both ends of a child seatbelt to a grocery cart such that the ends of the strap portions will not rub against metal parts at the attachment points on the grocery cart.

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claim 1 is, so far as definite, is rejected under 35 U.S.C. 102(b) as being anticipated by Wood (U.S. Patent No. 5,263,726) in view of Frano et al (U.S. Patent No. 5,669,118). Wood ('726) discloses a child seatbelt assembly including: a first strap (i.e., portion having elements 32, 20 and 26 in Fig. 2) with a first end (i.e., end 26) and a second end (i.e., end having portion 32); a second strap portion (i.e., portion having elements 28 and 30 in Fig. 2) with a third end (i.e., end

having portion 30) and a fourth end (i.e., end 28); a latch assembly (i.e., portion 30, 32) including a first latch element (32) engaging the second end and a second latch element (30) engaging the third end; and first and second retainer strap assemblies (i.e., rings) at the respective ends 26 and 28. of the strap portions. However, Wood ('726) does not shown wherein the first strap retainer assembly includes a first post element with first detent means and a first strap element with second detent means, the first retainer strap [assembly] being in an open position when the first detent means is free of engagement with the second detent means, and the first strap retainer assembly being in a closed position when the first detent means engages the second detent means; a second strap retainer assembly including a second post element with third detent means and a second strap element with fourth detent means, the second retainer straps assembly being in an open position when the third detent means is free of engagement with the fourth detent means, and the [second retainer strap assembly] being in a closed position when the third detent means engages the fourth detent means; the first retainer strap assembly being affixed to the first end in both the open position and the closed position of the first retainer strap assembly; and [the] second retainer strap assembly being affixed to the fourth end in both the open position and the closed position of the second retainer strap [assembly].

Frano et al ('118) shows a strap retainer assembly (i.e., strap retainer apparatus 10) to "secure a seatbelt-type child restraint apparatus to a grocery cart" (column 1, lines 31-33), the strap retainer assembly including: a first post element (i.e., locking mechanism 58) with first detent means (i.e., one of detent edges 90, 91; Figs. 4 and 5B) and a first strap element (i.e. combination of post element 12, section 50, and inclined elements 52 and 54) with second detent means (i.e., defined by stem 32, head 38), the first retainer strap [assembly] being in an open position (as shown in Fig. 3) when the first detent means is free of engagement with the second detent means, and the first strap retainer assembly being in a closed position (as shown in Figs. 1 and 2) when the first detent means engages the second detent means; wherein the first retainer strap assembly being affixed to the first end in both the open position and the closed position of the first retainer strap assembly (as demonstrate in Figs. 3 and 2 respectively).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have substituted each ring at the strap end portion of Woods ('726) restraint strap for the

strap retainer apparatus of Frano et al. ('118), therefore providing first and second retainer strap assemblies, since each of Wood's rings and Frano's et al. ('118) strap retainer apparatus were are recognized equivalent strap end attaching devices at the time the invention was made, and Frano et al. ('118) further suggests in column 1, lines 41-44, that the retainer strap apparatus can be secured to a grocery cart without the use of tools.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. Sandy whose telephone number is (703) 305-7413. The examiner can normally be reached on Monday through Friday from 7:30 PM to 4:00 PM (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Knight, can be reached on (703)308-3179. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

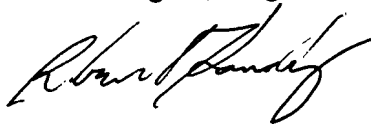
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or faxed to: (703)305-3597, (for formal communications intended for entry)

Or: (703)308-3687 (for informal or draft communications, please label "PROPOSED" or "DRAFT").

Hand-delivered responses should be brought to Crystal Park Five, 2451 Crystal Drive, Arlington, Virginia, Seventh Floor (Receptionist suite adjacent to the elevator lobby).



Robert J. Sandy
Patent Examiner